

ORIGINAL

W. 20435A-09-0296
W. 20435A-09-0298



0000107274

ARIZONA CORPORATION COMMISSION

UTILITY COMPLAINT FORM

Investigator: Trish Meeter

Phone: [REDACTED]

Fax: [REDACTED]

Priority: Respond Within Five Days

Opinion No. 2010 84820

Date: 2/8/2010

Complaint Description: 08A Rate Case Items - Opposed

 N/A Not Applicable

Arizona Corporation Commission

DOCKETED

Complaint By:

First:

Kathleen

Last:

Howard

Account Name:

Kathleen Howard

Home: (000) 000-0000

FEB - 9 2010

Street:

[REDACTED]

Work:

DOCKETED BY

City:

Sonoita

CBR:

State:

AZ

Zip: 85637

is:

Utility Company:

Sonoita Valley Water Company

Division:

Water

Contact Name:

Contact Phone:

Nature of Complaint:

2/2 DOCKET NO

W 20435A-09-0296 W 20435A-09-0298

From: Kathleen Howard [mailto:]

Sent: Wednesday, January 20, 2010 3:31 PM

To: Utilities Div - Mailbox; Newman-Web

Subject: Re W-20435A-09-0296 and W-20435A-09-0298 Rate and Finance Application of Sonoita Valley Water Co.

Per your public comment website (http://www.cc.state.az.us/divisions/utilitiestest/forms/public_comment.pdf):

"This form may be completed electronically, printed and mailed to:

Arizona Corporation Commission, Consumer Services Section, 1200 W. Washington St.

Phoenix, Arizona 85007;

or

You may e-mail it as an attachment to:

mailmaster@azcc.gov

yet the form also states in a pop-up that the form cannot be saved (and therefore cannot be mailed as an email attachment). The ACC form also will not print out the entire contents of the fields, but only the data that is visible on-screen so I cannot print out the form and send it by mail either. In light of the fact that the ACC website has incorrect information making it impossible to file a comment via email or the US postal service using the form I will include the information here.

I was also unable to access the e-docket function using the website specified in the notification letter and therefore unable to access the details of the determination. Because the e-docket function was not available and filing the form is impossible either on-line or via regular mail I would first ask that the hearing be delayed until

AZ CORP COMMISSION
DOCKET CONTROL

2010 FEB - 9 A 9:07

RECEIVED

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AM13190

the documents for this case are available to the public on-line and comments can be submitted via email (or as a last resort successfully printed and sent via US mail) - I and many of my neighbors have full-time jobs are cannot take days off to view documents in Tucson or attend hears in Tucson.

I am OPPOSED to this rate increase.

I submitted a lengthy set of questions and concerns when this case was first filed. I received one inadequate email response several weeks later, but since I cannot access the e-docket I have no idea if the issues raised in that letter/email have been addressed by ACC staff. I will attempt to include both my original letter and the inadequate staff response below.

To summarize: I am concerned the ACC is failing to act to prudently protect the consumers of Sonoita Valley Water and the precious natural resource they have been given to profit off of. I and many of my neighbors have spent thousands of dollars to install water storage tanks due to the unreliable nature of this corporation. I see no evidence the money spent by Buck has been spent wisely or prudently, or that the plans for the future are wise or prudent (there seems to be a real question as to whether the Papago Springs well needs to be re-sunk or whether the company is simply wasting thousands of gallons of water due to leaks). I am adamantly opposed to giving this organization more money until they provide a viable and independently verified plan for the future and a meaningful justification of spending to date (I was able to see e-docket back in July and their filing basically resembled an emptied shoe-box full of receipts). I would also like to see a plan that encourages water conservation, an issue I raised years ago when an "emergency" rate hike was approved. Finally I would like to see an objective outside evaluation performed as to validity of the spending to-date and the plans for the future - the ACC staff attitude seems to be "Buck knows a lot about water systems and we rely on his judgment to make our determinations."

If any further rate increase is approved by the Corporation Commission before an objective outside evaluation is provided (as was done by SSVEC to support its plan to improve electrical power access for Sonoita) I will contact the Arizona Attorney General's Office and request they open an investigation into both the behavior of Sonoita Valley Water and possible collusion of the ACC staff which decided to "give" our water system to Buck Lewis's company without any public hearing and then merge it with two other water systems with significantly more expensive infrastructure issues also without any public notice I am aware of and are now recommending over a 100% increase on top of the 100% increase in fees approved a couple of years ago (I was paying \$16 a month and now pay between \$30 and \$32).

My original letter:
8 July 2009

Commisioner Paul Newman
Arizona Corporation Commission
Commissioners Wing
1200 W. Washington - 2nd Floor
Phoenix, Arizona 85007
Phone
602.542.3682
Fax
602.542.3708
E-mail
Newman-web@azcc.gov

Commissioner Newman,
I apologize for sending this directly to you, but I have been unable to get anyone in the Tucson office to return my call or respond to my questions (more details below).
I am writing in regards to Docket Nos: W-20435A-09-0298 and W-20435A-09-0296. I am a customer of Sonoita Valley Water Company (SVC) and have been for just over seven years. The ACC granted an emergency rate increase to the company last year. That increased my rates by about 100% (I averaged about \$17 a month and

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now average almost twice that with no change in water usage). I have seen no improvement in water service, in fact an increased duration of outages, and now the company wants to raise our rates again - my rates will be over \$100 a month (I average between 900 on the low end and less than 2,000 gallons per month on the high end).

The company sent out notice of this rate increase filing with last month's bill and said it would hold a "town hall meeting" which 20-30 customers attended last Wednesday, June 24. The owner of SVC, Mr. E.H. "Buck" Lewis, the owner of Southwestern Utility Management (SUM) - the consulting firm that he contracts with to do the day-to-day running of the SVC - Bonnie O'Connor, and their attorney Steve Wene (I don't know if is being paid by SVC or SUM). There was no one in attendance from the ACC although at least two people had called the Tucson office and one says she was told an ACC staff member would be attending.

I am concerned that SVC/SUM are not acting in good faith and that the ACC has fallen short in looking out for the water customers in our area. I am hoping that you can step in and make sure we get a reasonable result. Because this is a complicated issue I am going to divide this letter into topics, each with a narrative and a list of questions.

But the bottom line is: our water system has been in trouble for years, the owner selected by the ACC seems to be using shell corporations to bleed the company dry and has not acted prudently to invest in fixing the aging infrastructure and now wants to walk away by forcing us to form a water district and take on the full burden of his inaction over the last six years.

Business Model

First, I would like to understand from the statewide perspective how our situation fits in with other privately-owned water companies in Arizona. When I first moved here Mike Ronstadt (yes, Linda's brother) owned the company. If repairs were needed we called him directly and he came out and often did the repair work himself. This business model makes sense, a sole-proprietor situation where the owner has the ability to do most of the work and maybe has part-time employees and occasional contract help. Unfortunately there were (and continue to be) expensive infrastructure repairs that need to be made and he apparently did not have the capital to make them.

So about six years ago the ACC took the company from Mr. Ronstadt and "gave" it to Mr. Lewis to run as interim manager. It was at about this same time that Mr. Lewis who owned Southwestern Utility Management (SUM) sold it to his secretary Ms. Bonnie O'Connor. It is unclear to me whether the ACC asked Mr. Lewis or SUM to take over operation of the Sonoita Valley Water, but in short order he was the sole owner of Sonoita Valley and was contracting at a profit for all day-to-day operations with his former company Southwestern. At the meeting Lewis, O'Connor and Wene all agreed that Lewis neither manages SVC nor supervises any field work. Further, Southwestern is a consulting firm focused on administration and getting rate increases from the ACC, so if there is engineering or repair work they often contract that work out - again paying full-market value. So we have gone from a situation where the owner could and did do much of the work himself to one in which the nominal owner of SVC does no work, makes monthly payments to his old company which is a for-profit corporation which in turn contracts out for at least some of the field work. So we are now paying two or three levels of profit-making entities instead of one.

All three corporate representatives at the meeting were pushing the idea of a water district. Buck had called another meeting about 3 years ago and told us then it was our only option, but there was no interest then and I suspect it would be a non-starter now (forming a fire district recently tore our community apart). The attorney, Mr. Wene, said that a co-op was the worst possible choice and re-iterated that a water district was our best option. As another audience member pointed out, it seems to be the best option for Mr. Lewis, but it is unclear why it would be a benefit to us. In this meeting Buck Lewis called the water company, "nothing but a loser." In this month's bill a "non-binding" ballot for interest in forming a water district was sent out with inaccurate verbiage suggesting audience members thought a district was a good idea, only the three people at the head table expressed this notion. This gives a false impression to customers who did not attend that it is to our benefit to take over what Mr. Lewis himself calls "a loser."

Business Model Questions:

1. Why did the ACC select Mr. Lewis to take over SVC, or did they in fact select his company at the time - Southwestern?
2. Why does the ACC believe this business model better serves the customers of SVC than the sole-proprietorship model we had with Mr. Ronstadt?
3. For how many other companies has the ACC directed similar transitions from sole ownership to multiple

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levels of consulting or shell corporations each taking their cut before service is actually rendered?

4. Why was Mr. Lewis first asked by the ACC to take over operation and then a year later given sole ownership of the company without any written plan to ameliorate the well known problems of the company?

5. If Lewis, O'Connor and Wene are correct and a water district is our best option, why hasn't the ACC suggested it to us, why did they give over the operation to a private individual if it is not possible to break even?

6. Why did Mr. Lewis take over the water company if there was no chance to make a profit? How much did he pay for it, if anything?

7. Is it possible for the water company to be run as a non-profit? It seems to me an efficient operator with some technical expertise could make a living, if not a profit, running a 40-customer water company.

Prudent Operations:

It seems to me the very least the ACC should require of corporations who run public utilities in the state is fiscal responsibility, prudent infrastructure maintenance and meeting all minimum health and safety requirements.

Safety: I went to the EPA's Safe Drinking Water Information System (SDWIS, http://oaspub.epa.gov/enviro/sdw_report_v2.first_table?pws_id=AZ0412005&state=AZ&source=Groundwater&population=113&sys_num=0) website and found that our water company had four violations last year alone, with the latest still not resolved (this probably also explains why this month's bill includes a sticker stating "2008 Water Quality Reports will not be mailed, but will be available upon request"). A woman sitting next to me at the meeting said she had to spend \$1500 of her own money to file suit to get AQED to come out and look at the water safety issues in the neighboring system the ACC let Mr. Lewis buy and merge with Sonoita Valley (more on that below).

Financial and capital asset prudence: Mr. Lewis has been in charge or owner of Sonoita Valley Water for about six years now, since 2003. He claims to have spent \$300,000 to upgrade it and yet when I asked exactly what the \$300,000 bought us and whether it included \$164,324 in retained earnings listed on the "Sonoita Valley Water Company Balance Sheet as of 12/31/08" included in the Finance Application, I did not get a straight answer. It is clear looking through the receipts that tens if not over \$100,000 went back to his former company, Southwestern, for day-to-day operations. Add to that \$164,000 in "retained earnings" plus profits for all the subcontractors used and we are left with less than a third of that figure going to actual improvements to the water system.

I also have to ask about the priorities Mr. Lewis/Ms. O'Connor set in approaching our aging infrastructure. They did not bother to drill a new well until last year and now say they did not go deep enough and yet it looks like they are pumping almost twice as much as they are selling. Wouldn't the prudent course be to fix the leaks first? Also, I and many of my neighbors have been given new meters in the last month. Why? My house is only about 10 years old, why spend time and money replacing working meters when there are critical infrastructure issues that need to be attended to? A neighbor reports seeing multiple trucks and half a dozen employees every time someone makes a service call - clearly there is no incentive to economize.

Finally I have some concerns about a generally sloppy and unbusiness-like conduct by all water company representatives. The customer notification they sent out with last month's bill said, "It is important that customers contact the Commission within 15 days of the receipt of this notice so that the Commission's staff can consider customer comments and concerns in developing its recommendations to the Commission." When we asked about this at the meeting Mr. Wene said they were forced to include that verbiage by the ACC, but that we didn't have to worry about it, there was no date set. When I noted that Mr. Lewis was still listed as the State Agent for Southwestern, Ms. O'Connor said he sometimes still filled in when she was not available, that she hadn't changed it on the ACC filing, but that she is the sole owner. Yet on the ACC's "Regulated Utility List Water Only December 31 2008" neither Southwestern, which is listed for several other water companies, nor Buck Lewis is listed as the contact, but Bonnie O'Connor is. Who actually owns what?

Two or three years ago we were put on notice we could only use water for the most restricted purposes. When the last rate increase was requested I asked if that notice had ever been rescinded and the office said no but

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they weren't enforcing it either. This kind of sloppiness and finger pointing at the ACC makes me question their credibility on larger issues.

Our latest bill moved up the past due date 18 days. It has been about the twentieth of every month, now it is the second, not even one day after the bill arrived. How often is a company allowed to change billing due dates, this is the second time in a couple of years this has happened, aren't they required to allow a reasonable period before a bill is considered past due?

Prudence Questions:

1. Why wasn't there a written plan outlining not just work required, put a plan describing the path to make Sonoita Valley sustainable when the company was given to Mr. Lewis? Why wasn't such a plan demanded as a condition when the emergency rate increase was granted? Why isn't such a plan a part of this current rate increase and finance request?
2. What right do customer's have to ask that the \$300,000 expenditure claim be justified in an organized manner (rather than 400+ pages of photocopied receipts) by type of expenditure (and success or failure of the expenditure if appropriate), with explanations and justification for priorities as they were set.
3. I am very concerned about the incestuous relationship between Sonoita Valley Water and Mr. Lewis's former company Southwestern Utilities. Do the customers have a right to ask for a clear accounting of how much was paid when all these companies changed hands and whether that \$164,000 is money that will go to Mr. Lewis. I am concerned that he sold Southwestern to his secretary so if he had to file bankruptcy Southwestern's assets would be protected.
4. Is it true that the ACC forces companies to send out form letters that are inaccurate and misleading?

The Merger:

I do not understand how it was in the best interests of Sonoita Valley Water customers to be merged with Southern (which is comprised a company that supplied "downtown" Sonoita, the commercial properties at the crossroads, and one that covered a subdivision known locally as Los Encincos). At the meeting a couple years ago, Buck told us that the Sonoita Valley Water system - which covers the Papago Springs subdivision - was an engineered system whose pipes were in pretty good shape and that we only needed a new (or deeper) well. The Los Encincos system by contrast, he said, is not an engineered system and had hundreds of thousands of dollars of work needed to bring it up to standard. Now that they have been merged it was very unclear in the meeting what systems needed and would be getting what upgrades. Also, if I understood my fellow audience member correctly and the AQED has had to get involved to solve water quality issues on the Los Encinos system why would you allow Mr. Lewis not only to merge operations and finances of the two systems but put a physical link between the two.

Merger Questions:

1. Why was Mr. Lewis allowed to take over the Southern Water Companies when he had shown no success in straightening out our water company?
2. Was any research done to determine whether it was in the best interest of the Papago Springs customers to merge with a water company whose infrastructure was in much worse shape than ours and has water quality issues? What was the justification for the merger? What benefits, if any, have accrued from it for the Papago Springs customers?

Process

According to the three water company reps we only have two choices, pay them much higher fees or form a water district. Mr. Wene repeatedly said the fees in the rate case were not realistic and would not be implemented but they were forced by ACC rules and required formulas to make them that high. Ms. O'Connor blamed the fact that the water company is a for-profit entity for their inability to qualify for any grants. Mr. Wene said that a water district would have a better chance of getting grants and failing that it would pay 2% less in interest on any loans that were required. He also said a water district would have to meet lower standards and face less scrutiny from the ACC. Ms. O'Connor talked about what a burden it was having to deal with the ACC, "we don't like dealing with the corporation commission unless we have to." She said a rate case costs about

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\$20,000 and will take 12-18 months.

Because I was worried about the time limit I called the ACC Tucson office on Wednesday June 17 and spoke to someone named Jenny. I told her I had questions about the rate case and she said I needed to talk to Richard Martinez who was handling the case; she had all my contact information from the previous rate increase case. She said Mr. Martinez was at lunch and would call me back. He never has. I had this experience the last time I contacted the commission on the previous rate increase. I called, left a message and got no response until I sent an email.

Process Questions:

1. Did ACC rules and formulas give SVW no alternative but to go for a base rate of almost \$100/month?
2. What is the time frame for customers to comment on this?
3. What does it mean to intervene in the case?
4. Do we really only have two choices - pay much higher rates to Mr. Lewis or form a district?
5. What happens if Mr. Lewis declares bankruptcy?
6. Is there a non-profit that could take over our water company?
7. How long will this rate case take?
8. What rights and access to corporate information do customers like myself have?
9. What is a "full accounting" how do I request one and what will I get if I do?

Bottom Line:

I understand the City of Patagonia, 12 miles from our neighborhood, is selling 3,000 gallons of water for \$27.50. As I use less than 2,000 gallons a month and I have already spent about \$2,000 for a storage tank, it looks like it would actually be cheaper for me, today, without any additional water rate hikes, to haul water. This makes no sense to me.

I made a capital investment in a water storage tank here after doing due diligence and accepting the state of the water company. I don't think it is at all unreasonable to expect any person or organization that takes over a water company to do as much - determine the actual state of the company and develop a written plan to make it sustainable and sink some capital in it. This has not happened for six years and the sloppy unprofessional way this rate increase has been presented is evidence that it is not going to happen - the only SVC plan is to ask the customers to shoulder an ever-increasing burden without fixing any of the root causes in a timely or prudent manner.

If you have read this far, thank you very much. I would like to ask that the emergency rate hike be rescinded and the ACC investigate the on-going mismanagement of Sonoita Valley Water Co. and determine what the best options are for the customers, as opposed to Buck Lewis and Southwestern Utilities. I know we are not the only rural water company facing these kinds of issues and perhaps the ACC needs to look at a long-term solution like forming a statewide water co-op to mimic the energy cooperatives which seem to do a very responsible job for their customers and treat their employees well.

I would ask that any response to this email be in writing as my neighbors have reported varying and inconsistent responses in their telephonic dealings with ACC staff.

I will send a hard copy of this letter to follow this email.

Again, thanks for reading and for any help you can provide,

Kathleen Howard

Sonoita, AZ 85637

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and here is the response I got:
7/30/09

Ms. Kathleen Howard:

I understand your frustration as you wrote down your thoughts on your recent email addressed to Commissioner Paul Newman. As I told you on the phone last week, I was assigned to address the concerns and looking over the written information. I am confident that I will be able to address your questions pertaining to the "Process" portion as my work is closely aligned with these questions you asked.

The Arizona Corporation Commission ("ACC") has no control whether a company such as Sonoita Valley Water Company desires to come before the ACC in order to change this Public Utility Company ("PUC") to Water Improvement District. I believe this has to go through the County initially and a petition has to be distributed to make certain that whatever majority that is required is attained before the company can proceed. Yes, it does have to be approved by the ACC in order to verify that the facts and figures to support this water company can be carried out in a prudent and professional manner to its members.

The ACC will hold hearings once the application to transfer its assets has been filed in order to determine if this new entity (environment) would be fit and proper to run this water company in an acceptable and professional manner. At this time, after all the facts and figures have been scrutinized the Commissioners will vote either for or against this new method being brought forward by the water company. The ACC would make certain that the requirements must be adhered to before this transfer of business could take place.

Many of the questions you were asking can be found by looking through the ACC's website at www.azcc.gov. Once there you can click on the eDocket icon located at the bottom of the screen. To reach the section that will pull your specific docket number click on the Search icon located at the top of the screen. Click on docket number search and where it asks to list the Year and Matter please add 09 under the Year and add 0218 under the Matter portion and then hit search. This will bring up your particular docket. The next step would be to click on the Document tab located at the top of the page. This will list everything that has been completed up to day you bring up this information to the screen. On the far left of this screen you should see a page icon wrapped with red markings (this is the PDF "file"). You can then view and/or copy any of the pages that have been docketed up to his point.

The following answers are to your questions regarding the "Process" section of your letter that I am addressing:

1. The rates the company submits to the ACC are formulated based on the needs of each individual company. During the Hearings both sides are speaking about the amounts that should be charged by the water company to its members. The water company gives its facts to support their proposed base rate amounts and the ACC staff will counter with questions as to why and how those rates have been determined. Often ACC staff and the companies are not in agreement with the figures as presented and many times counter alternatives are worked out and eventually a mutual understanding of what rates would be "acceptable" based on the information presented before the ACC. Normally, a standard Return of Investment ("ROI") determined based upon such factors as other comparable companies with industry standards being the focal point.

As you mentioned in your letter this process is quite lengthy (from 12-18 months) and it is given a great deal of effort and consideration prior to the Administrative Law Judge ("ALJ") writing up their order and ultimately the Commissions voting on this matter brought before them.

2. Customer can begin to comment on this matter now until the time prior to the Open Meeting where the Commissioners will vote on the ALJ's order. Ultimately, the Commissioners have an opportunity to change the Order (modify it) or reject it prior to them voting on this rate increase.

3. Nothing has changed on Interventions since the last time that you were explained how Interventions worked by my colleague, Guadalupe Ortiz, (January 15, 2007- Complaint # 65797). You will still receive any and all copies of all documents that have been docketed throughout the next several months. This is one way of

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making sure you have your voice heard while at the same time realizing that all public information regarding this rate case would be mailed to you for your records.

4. This is something you will have to speak with the water company directly with. Southwestern Utility Management ("SUM") has been given the right to manage this company and it would be up to them to answer this question for you. The telephone number to SUM is

5. If Mr. Lewis declares bankruptcy this water company will have to go through the Bankruptcy Courts as they will determine how the debits and assets will be handled. The ACC can then determine at that time if a new interim manager may need to be appointed until this goes through the Bankruptcy process.

6. A non-profit company just like a for profit company can take over this water company. Either entity will do its best to make sure the company continues to remain viable and continue to service the members who receive water from this company.

7. This rate case process, as it was explained to you per Bonnie O' Conner, is between 12-18 months in length.

8. Anything that is public records for this company can be looked up in our ACC web site under "eDocket". As long as you have the name of the company and the specific docket number, access is open to anyone to view at all hours of the day and night. The easiest method would be to enter the year, in this case 09 and then the following four numbers, in this case 0296 (for the rate application) or 0298 for the financing application into the. Again, this can be located under eDocket once you have entered the ACC's website. Click under Documents in order to view specifically what you are looking for.

Click on eDocket, click on Search, and under Docket Number enter 09 under year and then enter either 0296 (rates) or 0298 (finance) for matter number.

9. The accounting information that will be presented to the ACC is also available on the ACC web site as mentioned above. This information is made a part of the public record. Income statements and Balance Sheets can be located here as well.

I hope this helps you in your search in locating pertinent information regarding this pending rate case. Remember, attending any Public Comment Meetings and attending the Hearings are also great ways in which to receive on-going and more current information for your use. I thank you for your time.

Sincerely,

Richard Martinez
Public Utility Analyst II
Arizona Corporation Commission

End of Complaint

Utilities' Response:

Investigator's Comments and Disposition:

Answers to questions addressed in previous complaint No. 80295 filed by Richard Martinez. As opinion was not docketed then, I have docketed in W-20435A-09-0296 and 0298.

End of Comments

Date Completed: 2/8/2010

Opinion No. 2010 - 84820